

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the matter of:

CHARLES AND IVY PEREIRA
12730 Veirs Mill Road, No. 104
Rockville, Maryland 20853

Complainants

vs.

Case No: 590-O

BOARD OF DIRECTORS, PARK
TERRACE CONDOMINIUM
c/o Maggie Bruce
12700 Veirs Mill Road
Rockville, Maryland 20853

Respondent

DECISION AND ORDER

This case was called for hearing on May 21, 2003, at which time two of the three Commissioners were present. Both the Complainants and Respondent were asked if they had any objection to proceeding with two of the three Panel members and if so, the matter would be rescheduled for a date and time when all three panel members could be present. The two members of the Panel present were Panel Chair William John Hickey and Commissioner Barry Wertlieb. Both Complainants and Respondent affirmatively agreed to go forward with two of the three Commissioners and abide by their decision in this matter.

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Chapter 10 B, Sections 10 B-5(i), 10 B-9(a), 10 B-10, 10 B-11(e), 10 B-12 and 10 B-13 of the Montgomery County Code, 1994, as Amended, and the Commission having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

On August 7, 2002, Charles Pereira, husband of Ivy Pereira and owner of Unit 104, 12730 Veirs Mill Road, Rockville, Maryland filed a Complaint with the Office of Common Ownership Communities. The matter could not be resolved through mediation and this dispute was referred to the Panel for a public hearing. Complaints' claim filed with the Commission was broad and verbose. Essentially, the claims raised were: 1. That the Respondent had improperly imposed a penalty of \$50.00 for alleged violation of the Respondent's Rules and Regulations; 2. That Respondent had improperly adopted a "Welcome Packet and Rules Regulation;" 3. That the Board had not properly adopted its budget and; 4. That the Board is in violation of the Maryland Condominium Act and the By-Laws by spending the Association's funds improperly.

On April 8, 2003, the Commission, after a review of claims pursuant to Section 10 B-8 of the Montgomery County Code, accepted jurisdiction and referred the matter to public hearing with regard to only two issues: (1) Was a penalty of \$50.00 properly imposed upon the Complainants for alleged Rules violations and, (2) Did the Respondent improperly adopt the Welcome Packet and Rules and Regulations (which amended the Rules and Regulations previously in effect.)

It should be observed that the Complainants filed a Complaint before this Commission and against the same Respondent in 1997 (Case No. 335-O). In that case, the Complainants alleged that the Board of Directors acted outside its authority in spending reserve funds and alleged that the Council of Unit Owners had improperly delegated authority to the Board of Directors to adopt an annual budget in violation of the Maryland law. To the extent this opinion

in any way involves the same issues previously litigated, this Panel adopts and incorporates by reference, the Findings and Conclusions of Law of the prior Decision dated March 3, 1997.

Discussion

The instant matter was set for public hearing on May 21, 2003 at 6:30 pm.

Both Complainants and Respondent were informed of the scope of the hearing and that it would be limited to the two issues the Commission approved.

Complainants' position and interpretation of Maryland law and the By-Laws of the Association was that both upheld his position that he was the subject of an unlawful fine and that the Rules and Regulations adopted by the Respondent were of no force or effect. Complainants provided photographs of other patio areas which they contended were just as violative of the Rules and Regulations as their patio was alleged to be. Complainants contended the Rules and Regulations had been adopted without the appropriate legal authority and input of Unit owners, and, thus, were null and void.

Complainants argued that Article V, Section 10 of the Park Terrace By-Laws was unenforceable as an illegal delegation of authority to the Board of Directors.. With regard to the Welcome Packet and Rules and Regulations initially adopted on October 31, 1995, Complainants argued that the Board of Directors had no authority to adopt or amend them and that to do so was undemocratic and autocratic.

With regard to the \$50.00 fine, Complainants argued that the Rules and Regulations are simply unenforceable fantasies of the Board based upon an application of the Rules and Regulations which had not been adopted by the owners themselves.

Finally, Complainants argued that even the original Rules and Regulations were illegal as the adoption of them was by the Developer/Board and not submitted to the Council of Unit Owners.

The Respondent, Park Terrace Condominium, was represented by Charles F. Chester, Esquire. Mr. Chester presented evidence that the Respondent had long-standing Rules and Regulations with regard to what type of furniture could be stored and/or placed on the patios. Further, these Rules and Regulations were adopted pursuant to the Maryland Condominium Act, 11-111(a). The Bylaws, Article III, Section 2 specifically empowers the Board of Directors to adopt, from time to time, any rule and regulation deemed necessary for the enjoyment of the Condominium provided such rules and regulations shall not be in conflict with the Maryland Condominium Act, which these were not.

Further, Mr. Chester provided evidence and testimony, that the Respondent was empowered by law to initiate fines for violations of the Rules and Regulations. In addition, testimony was provided that the original Rules and Regulations were formally approved but with a different numbering system with no change in content to the two specified Rules Complainants violated. The Complainants were not present at the meeting that adopted the current Rules and Regulations.

The current Board's Treasurer and former President testified with personal knowledge of Complainants' failure to comply with the Rules and Regulations. In a vote taken by the Board of Directors, the management agent was directed to send the Complainants a letter notifying the Complainants of the specific violations found.

Findings of Fact

1. The Park Terrace was constructed in 1974 as a condominium community.

2. Mr. and Mrs. Pereira have lived at the Park Terrace Condominium for several years and are, or should be, familiar with its By-Laws and Rules and Regulations.

3. The Park Terrace Condominium By-Laws are part of the governing documents of the Condominium Association and provide in Article V, Section 10 that rules and regulations concerning the operation and use of the common elements may be promulgated and amended by the Board of Directors providing that such rules and regulations are not contrary to or inconsistent with the Maryland law, the Master Deed, or the By-Laws. The initial Rules and Regulations as amended by the Board with the approval of the majority of owners are enforceable.

4. The Rules and Regulations in Provision 4.11 requires that each resident shall keep his unit and any balcony, patio or terrace to which his unit has sole access, in good state of preservation and cleanliness, and for a violation thereof incur an initial fine of \$25.00

5. That Provision 4.13 of the Rules and Regulations provides that outdoor furniture, potted plants, and other items commonly associated with outdoor living, decoration, or usage may be placed on the balconies, patios, and terraces. All items so placed must be in good state of repair. Violation of this provision will result in a fine of \$25.00.

6. The Association's By-Laws in Article III, Section 2, grants the Board authority to manage the affairs of the Condominium, including the making, amending, adopting, enforcing, and assessing fines for Rule violations.

7. The Complainants' balcony is a limited common element subject to the Rules and Regulations and is at issue in this hearing. The Complainants were duly notified of the Rules violations and afforded an opportunity for a hearing before the Board to take place on May 24, 2002 at 7:00 pm. The Complainants did not attend the hearing and the hearing went forward on

May 24, 2002 at 7:15 pm. The Board concluded Complainants were in violation of the Rules and Regulations 4.11 and 4.13 and assessed a fine of \$25.00 for each violation.

8. The photographic evidence presented to this Panel reflects that Complainants clearly maintained furniture that was in violation of Rules and Regulations 4.13 in that “exercise equipment” and “metal kitchen furniture and chairs” were not the items which would fall within the limitations of “outdoor furniture” contemplated by that Section.

9. Other photographic evidence accepted as evidence clearly demonstrated that the Complainants’ patio was not maintained in a good state of preservation or cleanliness and was in violation of Rule 4.11. Photographic evidence presented by Complainants did not sway the Panel’s opinion that there was selective enforcement of the Rules and Regulations nor that the Complainants were denied any procedural due process.

Conclusions of Law

The Commission’s Panel concludes, after full and fair consideration of the evidence of record, based upon the preponderance of the evidence that:

1. By a preponderance of the evidence, the Panel finds that the applicable Rules and Regulations were properly and legally adopted pursuant to Maryland law and the By-Laws of the Respondent and are legally enforceable.
2. Any amendments to these Rules and Regulations were proper and that there was no substantive change by the adoption of an amended set of the Rules and Regulations.
3. The Respondent’s Board of Directors clearly has the authority to adopt Rules and Regulations and to enforce violations of those Rules and Regulations.
4. The Respondent satisfactorily established the authority of the Board to impose fines for violations of these Rules and Regulations and such fines were reasonable.

5. The violations were substantiated, were not imparted to the Complainants' arbitrarily or capriciously and were patently justified based upon the evidence of record.

6. The Complainants' contention that the Welcome Packet that contained the original Rules and Regulations was unenforceable and illegal is without merit and was not supported with any evidence whatsoever.

ORDER/DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 16th day of July, 2003, ordered:

1. That the Complainants have failed to sustain the burden to establish that the Rules and Regulations were either improperly adopted, illegal, or were improperly applied or enforced.

2. That the Panel finds that the fines are reasonable and related to the violations of its Rules and Regulations.

3. The Respondent requested attorneys fees in view of its contention that the matter was frivolous. The Panel declines to award attorneys' fees in this instance, notwithstanding the fact that it takes notice that a prior Commission Panel upheld the challenged authority of the Respondent's Board of Directors.

4. That the decision of the Panel is unanimous. Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days after the date of the entry of this order and in accordance with the Maryland Rules of Procedure.

By William John Hickey *WJH*
William John Hickey
Panel Chairperson, Commission on
Common Ownership Communities